

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 497

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S.P. 188

In Senate, February 8, 1991

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator COLLINS of Aroostook

Cosponsored by Senator BRANNIGAN of Cumberland, Representative MITCHELL of Vassalboro and Representative GARLAND of Bangor.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

An Act to Enhance the Supervisory Powers in the Maine Banking Code.

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(EMERGENCY)

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4  
6           Whereas, present volatile economic conditions in Maine and  
across the nation adversely impact the financial industry and may  
warrant responsive action by the Superintendent of Banking; and

8  
10           Whereas, the federal regulatory agencies have the  
flexibility in statute to address problematic situations and the  
Superintendent of Banking should have similar powers to act in  
12 the best interest of the State; and

14           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
16 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
18 safety; now, therefore,

20           **Be it enacted by the People of the State of Maine as follows:**

22           **Sec. 1. 9-B MRSA §312-A is enacted to read:**

24           **§312-A. Authority for expedited charter**

26           Notwithstanding any other provision of law, the  
28 superintendent may grant a charter to organize a stock financial  
institution effective immediately if the superintendent  
30 determines that such action is necessary for the protection of  
depositors, shareholders or the public. This action may be taken  
32 only in conjunction with transactions processed under section  
354-A or 355-A.

34           **Sec. 2. 9-B MRSA §342, sub-§1, as amended by PL 1983, c. 600,**  
36 **§2, is further amended to read:**

38           **1. Federal savings bank or savings and loan to state thrift**  
**institution.** Any federal association or federal savings bank may  
40 convert to a savings bank or savings and loan association  
organized under the laws of this State in the following manner.

42           A. At an annual meeting or a special meeting called for  
that purpose, 51% or more of the members or shareholders  
44 present and voting must approve of such the conversion.  
Notice of such the meeting shall must be mailed to each  
46 member or shareholder not less than 20 nor more than 30 days  
prior to such the meeting at his the member's or  
48 shareholder's last known address as shown on the books of  
the institution.

50           B. At the meeting required in paragraph A, the members or  
52 shareholders shall vote upon directors who shall be the

2 directors of the state-chartered institution after  
conversion becomes effective, and also vote upon incorporators  
4 if the state-chartered institution is to be a mutual savings  
bank.

6 C. Within 10 days after such the meeting, a copy of the  
minutes of such the meeting, verified by affidavit of the  
8 clerk or secretary, together with such additional  
information as the superintendent may require, shall must be  
10 submitted to the superintendent for ~~his~~ the superintendent's  
approval or disapproval in writing of the proposed  
12 conversion pursuant to the procedures and requirements of  
section 252. The verified copies of the minutes of the  
14 meeting when so filed shall ~~be~~ are presumptive evidence of  
the holding and action of such the meeting.

16 D. Copies of the minutes of such the meeting of members or  
shareholders, verified by affidavit of the clerk or  
18 secretary, and copies of the superintendent's written  
approval shall must be mailed to the Federal Home Loan Bank  
20 Board within 10 days after such approval.

22 E. Following compliance with all applicable requirements of  
federal law, if any, the directors elected pursuant to  
24 paragraph B shall execute 3 copies of the articles of  
incorporation upon which the superintendent shall endorse  
26 his approval and such those articles shall must be filed in  
accordance with the provisions of section 313 or 323. Each  
28 director shall sign and acknowledge the articles, as a  
subscriber ~~thereto~~ to the articles.

30 F. So far as applicable, the provisions of this Title shall  
32 apply to the resulting institution.

34 **Sec. 3. 9-B MRSA §355-A**, as enacted by PL 1987, c. 40, §2, is  
36 amended to read:

38 **§355-A. Authority for expedited acquisitions**

40 Notwithstanding any other provision of law, or any charter,  
certificate of organization, articles of association, articles of  
42 incorporation or bylaw of any participating institution,  
~~following approval of a plan of acquisition of assets and an~~  
44 ~~assumption of liabilities by a majority vote of the boards of~~  
~~directors acquiring or assuming financial institution or~~  
46 ~~financial institution holding company and the transferring~~  
~~institution and upon receipt by the superintendent of certified~~  
48 ~~copies of the authorizing resolutions adopted by the respective~~  
~~boards of directors,~~ the superintendent may order that the  
50 acquisition of assets and assumption of liabilities become  
effective immediately if he ~~believes~~ the superintendent  
52 determines that the action is necessary for the protection of

2       depositors, shareholders or the public. ~~Any person aggrieved by~~  
3       ~~an acquisition of assets and assumption of liabilities pursuant~~  
4       ~~to this section shall be entitled to judicial review of the~~  
5       ~~superintendent's order in accordance with the Maine~~  
6       ~~Administrative Procedure Act, Title 5, chapter 375, subchapter~~  
7       ~~VII. This action may be taken upon receipt of the following:~~

8               1. Authorizing resolutions and plan. Certified copies of  
9       the authorizing resolutions adopted by the respective board of  
10       directors of the acquiring or assuming financial institution or  
11       financial institution holding company, and a copy of the plan of  
12       acquisition of assets and assumption of liabilities approved by a  
13       majority vote of the boards of directors of the acquiring or  
14       assuming financial institution or financial institution holding  
15       company and the transferring institution; or

16               2. Notice. Notice, containing information required by the  
17       superintendent, from any other person of intent to acquire the  
18       assets and assume the liabilities of a financial institution or  
19       financial institution holding company.

20               Any person aggrieved by an acquisition of assets and  
21       assumption of liabilities pursuant to this section is entitled to  
22       judicial review of the superintendent's order in accordance with  
23       the Maine Administrative Procedure Act, Title 5, chapter 375,  
24       subchapter VII.

25               Sec. 4. 9-B MRSA §§412-A and 439-A are enacted to read:

26               §412-A. Capital

27               1. Requirement. Every financial institution organized  
28       pursuant to chapters 31 and 32 shall establish and maintain  
29       adequate levels of capital in accordance with rules adopted by  
30       the superintendent. These levels must be at least equal to those  
31       required for federally chartered financial institutions. These  
32       rules must address, at a minimum, composition of capital, capital  
33       levels that must be maintained and procedures that must be  
34       followed to restore capital should it become impaired or fall  
35       below the minimum standards.

36               2. Exception. The superintendent may approve, in writing,  
37       capital levels below the required minimum if the superintendent  
38       considers it necessary or appropriate in light of the particular  
39       circumstances of the financial institution.

40               §439-A. Lending limits

41               1. Definitions. As used in this section, unless the  
42       context otherwise indicates, the following terms have the  
43       following meanings.

2           A. "Loans and extensions of credit" include all direct or  
4           indirect advances of funds to a person made on the basis of  
6           any obligation of that person to repay the funds or  
8           repayable from specific property pledged by or on behalf of  
          the person. "Loans and extensions of credit" may also  
          include, to the extent specified by the superintendent, any  
          liability of a financial institution to advance funds to or  
          on behalf of a person pursuant to a contractual commitment.

10           B. "Person" includes an individual, sole proprietorship,  
12           partnership, corporation, joint venture, association, trust,  
14           estate, business trust or any similar entity or  
16           organization. In determining loan limitations under  
          subsection 2, the superintendent has the authority to define  
          further through rulemaking "person," including rules  
          regarding the aggregation of related parties.

18           2. Limitations. A financial institution subject to the  
20           provisions of this Title, or a service corporation established  
22           pursuant to section 445, may not make loans or other extensions  
24           of credit outstanding at one time to a person in excess of 20% of  
          its total capital and surplus. Total loans or other extensions  
          of credit in excess of 10% of total capital and surplus must be  
          approved by a majority of the board of directors or executive  
          committee.

26           3. Exclusions from limitations. The limitations contained  
28           in subsection 2 are subject to the following exceptions:

30           A. Loans or extensions of credit arising from the discount  
32           of commercial or business paper evidencing an obligation to  
          the person negotiating it with recourse;

34           B. Loans or extensions of credit to municipal corporations  
36           located within this State upon their bonds or notes;

38           C. Loans or extensions of credit to the extent that they  
40           are secured or covered by guarantees, or by commitments or  
42           agreements to take over or purchase the same, made by any  
44           Federal Reserve Bank; the United States; this State; or any  
          department, bureau, board, commission, agency, authority,  
          instrumentality or establishment of the United States or  
          this State, including any corporation owned directly or  
          indirectly by the United States or this State;

46           D. Loans or extensions of credit secured by a segregated  
48           deposit account in the lending bank;

50           E. Obligations as endorser, with or without recourse or as  
52           guarantor, conditional or unconditional of dealer-originated  
          obligations; and

2 F. Sales of federal funds, interbank deposits, not to  
3 include certificates of deposit, and clearings.

4 4. Record of directors' actions. When loans in excess of  
5 10% of total capital are approved, the records of the company  
6 must show who voted in favor of the loan. These records and  
7 those required by section 222 constitute prima facie evidence of  
8 the truth of all facts stated in the records in prosecutions and  
9 civil actions to enforce the provisions and penalties enumerated  
10 in section 465, subsection 3.

11 5. Rulemaking. The superintendent may prescribe rules to  
12 administer and carry out the purposes of this section, including  
13 rules to define or further define terms used in this section and  
14 to establish limits or requirements other than those specified in  
15 this section if the superintendent determines that such action is  
16 necessary for the protection of depositors, shareholders or the  
17 public.

18  
19 **Sec. 5. 9-B MRSA §465, sub-§3, ¶A, as repealed and replaced by**  
20 **PL 1987, c. 405, §2, is amended to read:**

21  
22 A. Every director, corporator, officer, agent or employee  
23 of a financial institution who authorizes or assists in  
24 procuring, granting or causing the granting of a loan in  
25 violation of this section or ~~sections 534-B, 633 and 734-B~~  
26 section 439-A, or pays or willfully permits the payment of  
27 any funds of the institution on such the loan, and every  
28 director of an institution who votes on a loan in willful  
29 violation of any of the provisions of this section and every  
30 director, corporator, officer, agent or employee who  
31 willfully and knowingly permits or causes the same to be  
32 done ~~shall--be~~ is personally responsible for the payment  
33 thereof of that loan and ~~shall--be~~ is guilty of a misdemeanor;

34  
35 **Sec. 6. 9-B MRSA §513, as enacted by PL 1975, c. 500, §1, is**  
36 **repealed.**

37  
38 **Sec. 7. 9-B MRSA §532, sub-§8, as enacted by PL 1979, c. 661,**  
39 **§4, is amended to read:**

40  
41 **8. Loans made in conformity with federal regulations.**  
42 Without regard to any other law, but subject to the lending  
43 limitations prescribed under section 439-A, a savings bank may  
44 make any loan secured by a first mortgage of real estate if that  
45 type of loan is authorized for financial institutions subject to  
46 regulations of the Federal Home Loan Bank Board or a successor  
47 federal regulatory agency, provided that the superintendent first  
48 determines that that type of loan complies with chapter 24.

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2           **Sec. 8. 9-B MRSA §534, sub-§2**, as repealed and replaced by PL  
1987, c. 405, §7, is amended to read:

4           **2. Limitations.** Loans made pursuant to this section shall  
6     be are subject to ~~individual-borrower-loan-limitations~~ lending  
   limits set forth in section 534-B 439-A. The aggregate amount of  
8     loans made pursuant to this section and section 535 shall may not  
   exceed 40% of deposits.

10          **Sec. 9. 9-B MRSA §534-B**, as enacted by PL 1987, c. 405, §9,  
   is repealed.

12          **Sec. 10. 9-B MRSA §535, sub-§3**, as amended by PL 1987, c. 405,  
14     §10, is further amended to read:

16          **3. Limitations.** Total participations in loans to any one  
18     borrower shall may not exceed the ~~limitations~~ lending limits set  
   forth in section 534-B 439-A. Loans made pursuant to this  
20     section shall must be included with those made pursuant to  
   section 534 for purposes of determining the limit as set forth in  
   section 534.

22          **Sec. 11. 9-B MRSA §539-A, sub-§1**, as amended by PL 1987, c.  
24     405, §13, is further amended to read:

26          **1. Authorization; limitations.** A savings bank may grant to  
28     any person or syndicate a commercial line of credit to an amount  
   not exceeding the limits set forth in section 534-B 439-A,  
   subject to the restrictions set forth in section 465.

30          **Sec. 12. 9-B MRSA §612**, as enacted by PL 1975, c. 500, §1, is  
32     repealed.

34          **Sec. 13. 9-B MRSA §633**, as amended by PL 1987, c. 405, §§17  
   and 18, is repealed.

36          **Sec. 14. 9-B MRSA §636, sub-§1**, as amended by PL 1987, c. 405,  
38     §19, is further amended to read:

40          **1. Authorization; limitations.** A trust company may grant  
42     to any person or syndicate a line of credit to an amount not  
   exceeding ~~20% of its total capital and reserves~~ the limits set  
44     forth in section 439-A, subject to the ~~restrictions,--if~~  
   ~~applicable,--as to the vote of the entire board and the rights of~~  
46     ~~interested persons to vote on the same~~, set forth in ~~sections~~  
   section 465 and 633.

48          **Sec. 15. 9-B MRSA §713**, as enacted by PL 1975, c. 500, §1, is  
50     repealed.



2           **Sec. 16. 9-B MRSA §732, sub-§11**, as enacted by PL 1979, c.  
661, §5, is amended to read:

4           **11. Loans made in conformity with federal regulations.**  
Without regard to any other law, but subject to the lending  
6 limitations prescribed under section 439-A, savings and loan  
8 associations may make any loan secured by a first mortgage of  
real estate if that type of loan is authorized for financial  
10 institutions subject to regulations of the Federal Home Loan Bank  
Board or a successor federal regulatory agency, provided that the  
12 superintendent first determines that that type of loan complies  
with chapter 24.

14           **Sec. 17. 9-B MRSA §734, sub-§2**, as repealed and replaced by PL  
1987, c. 405, §24, is amended to read:

16           **2. Limitations.** Loans made pursuant to this section shall  
18 be are subject to the ~~individual--borrower--loan--limitations~~  
lending limits set forth in section 734-B 439-A. The aggregate  
20 amount of loans made pursuant to this section and section 735  
shall may not exceed 40% of deposits.

22           **Sec. 18. 9-B MRSA §734-B**, as enacted by PL 1987, c. 405, §26,  
24 is repealed.

26           **Sec. 19. 9-B MRSA §735, sub-§3**, as amended by PL 1987, c. 405,  
§27, is further amended to read:

28           **3. Limitations.** Total participations in loans to any one  
30 borrower shall may not exceed the limitations set forth in  
section 734-B 439-A. Loans made pursuant to this section shall  
32 must be included with those made pursuant to section 734 for  
purposes of determining the limit as set forth in section 734.

34           **Sec. 20. 9-B MRSA §739-A, sub-§1**, as amended by PL 1987, c.  
36 405, §30, is further amended to read:

38           **1. Authorization; limitations.** A savings and loan  
40 association may grant to any person or syndicate a commercial  
line of credit to an amount not exceeding the limits set forth in  
42 section 734-B 439-A, subject to the restrictions set forth in  
section 465.

44           **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.  
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## STATEMENT OF FACT

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The purpose of this bill is to provide the Superintendent of Banking with the flexibility to take expeditious and appropriate regulatory action to address the current economic conditions existing in this State and throughout the nation.

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The bill provides for chartering a stock financial institution on an expedited basis only in conjunction with an emergency merger or acquisition of a financial institution pursuant to the Maine Revised Statutes, Title 9-B, section 354-A or 355-A in the resolution of a problem bank situation.

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The bill makes a technical change to permit a federally chartered savings bank to convert to a state-chartered savings bank using the same procedure that allows a federally chartered savings and loan association to convert to a state-chartered savings bank.

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The bill changes the law that authorizes the expedited acquisition of a financial institution to permit an individual or group of individuals to acquire a troubled financial institution or financial institution holding company.

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The bill repeals the current capital requirements for savings banks, savings and loan associations and trust companies and replaces them with a provision that authorizes the superintendent to establish minimum capital standards through rulemaking. All financial institutions must now meet stringent capital standards established by federal insuring agencies. The bill requires that rulemaking establish state levels at least equal to minimum federal levels. The bill also provides for a waiver of minimum capital levels if the superintendent determines that such action is necessary or appropriate in light of the particular circumstances of the financial institution.

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The bill repeals the current legal lending limits for savings banks, trust companies and savings and loan associations, and replaces them with legislation that consistently governs this activity in all financial institutions. This provision is substantially similar to that which establishes the legal lending limit for federally chartered financial institutions.

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The bill makes technical changes in several sections of the law containing cross references to the revised statute governing legal lending limits.